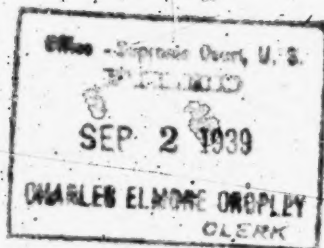


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No. 354

In the Supreme Court of the United States

OCTOBER TERM, 1939

FEDERAL HOUSING ADMINISTRATION, REGION No. 4,
STATE DIRECTOR RAYMOND FOLEY, PETITIONER

v.
RUTH BURR, DOING BUSINESS AS SECRETARIAL
SERVICE BUREAU

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF MICHIGAN

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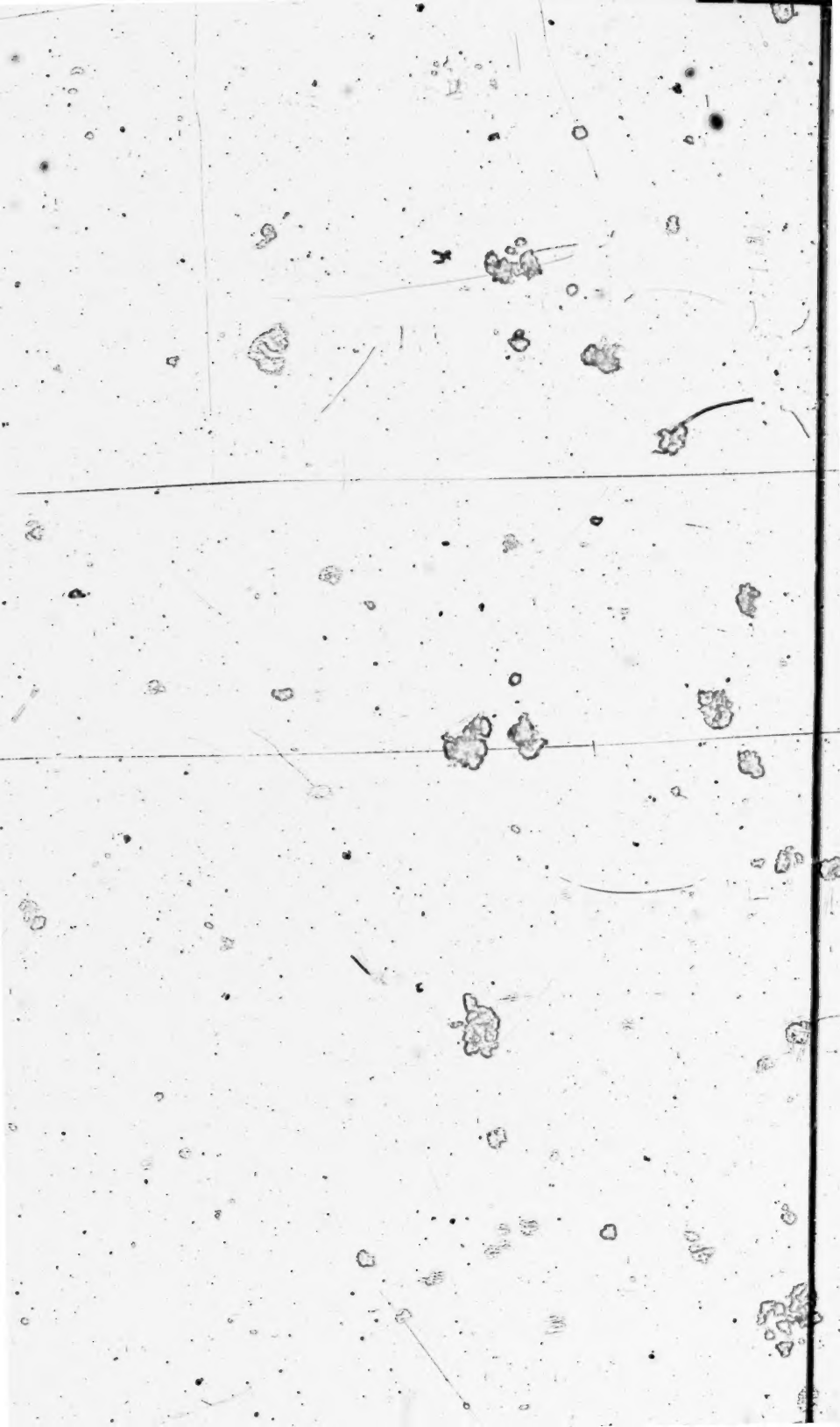
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The Solicitor General, on behalf of the petitioner, Federal Housing Administration, Region No. 4, State Director Raymond Foley, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Michigan entered in the above case on June 5, 1939, affirming the judgment of the Circuit Court of Wayne County, Michigan.

OPINIONS BELOW

The opinion of the Circuit Court of Wayne County, Michigan (R. 10) is not reported. The opinion of the Supreme Court of Michigan (R. 12) is reported in 286 N. W. 169.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Michigan was entered on June 5, 1939 (R. 15). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, on the ground that the decision below denied an immunity claimed by the petitioner under the Constitution and under the National Housing Act, as amended, c. 847, 48 Stat. 1246, c. 614, 49 Stat. 722, Sec. 344 (a). The case relied on to sustain the jurisdiction of this Court is *Federal Land Bank v. Priddy*, 295 U. S. 229.

The federal question was first raised by the petitioner's answer and disclosure wherein it was asserted that "the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6). The trial court held the petitioner subject to garnishment on the ground that the nature of the business of the Federal Housing Administration was not governmental but "that of an insurer of loans" (R. 10). The petitioner's ground of appeal from the trial court to the Supreme Court of Michigan was that "~~the~~ Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and cannot be sued without its consent, and is not within the jurisdiction of this court" (R. 4). The Supreme Court of Michigan affirmed the judgment of the court of first instance

on the ground that that immunity had been waived by the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended (R. 12-15). The grounds upon which it is contended that the question involved is substantial are set forth under the Reasons for Granting the Writ, *infra*, pp. 5-9.

QUESTION PRESENTED

Whether the Federal Housing Administration, through its State Director, is subject to garnishment for moneys due to an employee.

STATUTE INVOLVED

Section 1 of the National Housing Act, approved June 27, 1934, c. 847, 48 Stat. 1246, as amended by the Act of August 23, 1935, c. 614, Sec. 344 (a), 49 Stat. 722 (12 U. S. C., Supp. IV, 1702), provides:

* * * The Administrator shall, in carrying out the provisions of this title [title I] and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.

STATEMENT

On November 5, 1930, the respondent obtained a final judgment against one Heffner and a George Brooks (R. 4). Thereafter, on March 5, 1938, the petitioner was served with a writ of garnishment issued by the Circuit Court for the County of

Wayne, Michigan (R. 4).¹ Petitioner appeared in the cause and filed an answer and disclosure admitting that there was due and owing to Brooks by the Federal Housing Administration the sum of \$71.11, and asserting "That the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings" (R. 6).

Respondent moved for judgment against the petitioner (R. 6), which motion was granted and judgment entered thereon in favor of the respondent (R. 11). Thereafter the petitioner appealed to the Supreme Court of Michigan, which affirmed the judgment of the Circuit Court (R. 15).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Michigan erred:

1. In holding that the Federal Housing Administration is subject to garnishment proceedings.

2. In holding that the "sue-and-be-sued" clause of Section 1 of the National Housing Act, as amended, makes the Federal Housing Administration subject to garnishment proceedings.

3. In failing to hold that the "sue-and-be-sued" clause of the Act was limited solely to suits arising out of the carrying out of the provisions of Titles I, II, and III of the Act.

¹ The Federal Housing Administrator is not named as defendant, as is provided for in Section 1 of the National Housing Act, quoted above. However, no objection has been made on this ground by the Government, and it has treated the suit as against the Federal Housing Administration (R. 6).

4. In affirming the judgment of the Circuit Court for the County of Wayne, Michigan.

REASONS FOR GRANTING THE WRIT

1. The holding of the Supreme Court of Michigan that the Federal Housing Administration is subject to garnishment decides an important federal question which has not been but should be determined by this Court. The Federal Housing Administration was created by the President pursuant to the authority conferred upon him by the National Housing Act of June 27, 1934, c. 847, 48 Stat. 1246. It is an unincorporated agency of the United States, operating with funds supplied wholly by the United States and functioning as an integral part of a broad plan adopted to remedy the urban home-mortgage crisis. Its functions are governmental in character. Cf. *Graves v. New York ex rel. O'Keefe*, 306 U. S. 466. By the Banking Act of August 23, 1935, *supra*, p. 3, Section 1 of the Act was amended to provide that the Federal Housing Administrator "in carrying out the provisions of" titles I, II, and III of the Act, could sue and be sued in both federal and state courts.² The Supreme Court of Michigan held that

² Title I dealt with Housing Renovation and Modernization; Title II dealt with Mutual Mortgage Insurance; and Title III dealt with National Mortgage Associations. The legislative history of the amendment throws no light upon its interpretation with respect to the present controversy. See S. Rep. 1007, p. 24, 74th Cong., 1st Sess.; H. Rep. 1822, p. 57, 74th Cong., 1st Sess.

by reason of this amendment the Federal Housing Administrator was liable to garnishment proceedings brought by a creditor of an employee of the Administration.

The decision below is in substantial conflict with *McCarthy v. United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547. In that case an attempt was made to garnish the wages of an employee of the Shipping Board. The Court of Appeals for the District of Columbia held that the Shipping Board was exempt from garnishment.³ Although this Court had held, in *Sloan Shipyards v. U. S. Fleet Corporation*, 258 U. S. 549, that the Shipping Board was subject generally to be sued upon its contracts and torts, the Court of Appeals said (p. 923-924) that it did not follow that it was not exempt from garnishment—

for such an agency may be permitted by law to sue or be sued upon its obligations without being subjected to attachment or garnishment in cases unrelated to its own duties or liabilities. The present case is governed by this rule.

The court below attempted to distinguish the *McCarthy* case on the ground that "That case was based on the Merchant Marine Act of 1920, 41 Stat.

³ *Contra: Haines v. Lone Star Shipbuilding Co.*, 268 Pa. 92, 110 Atl. 788.

988, which does not contain the broad waiver of immunity found in the Federal Housing Act" (R. 15). But in the *Sloan* case this Court held that the Shipping Board was originally subject unrestrictedly to suit by reason of its incorporation under the laws of the District of Columbia, and that the subsequent bestowal upon it of governmental powers did not give it immunity from suit. Thus the immunity of the Shipping Board from suit was certainly not greater than that of the Federal Housing Administrator, and was probably less.

The court below relied on *Federal Land Bank v. Priddy*, 295 U. S. 229, in which this Court held that a federal land bank was subject to attachment. The bank's charter stated that the bank might sue and be sued "as fully as natural persons." No such language appears in the Federal Housing Act. Moreover, the attachments stemmed from the land bank's performance of its own duties, not from a controversy between third persons in which the bank was not interested. Finally, the bank had many of the characteristics of private business corporations, including ownership of its stock by private interests, which are lacking in the case of the Federal Housing Administration.

In *Buchanan v. Alexander*, 4 How. 20, the leading case establishing the immunity of federal officers and instrumentalities from garnishment, it was pointed out that it would be embarrassing to

the Government to permit garnishment. This is well illustrated by *United States of America v. Winkle Terra Cotta, Inc.*, No. 11,587 pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit. The creditor there brought garnishment proceedings in the state court against the St. Louis Director of the Federal Housing Administration, who moved to dismiss, but was unsuccessful. Judgment went against the Federal Housing Administration. An appeal on behalf of the United States was disallowed on the ground that the United States was a stranger to the record. The United States then filed an injunction suit in the United States District Court for the Eastern District of Missouri against the creditor and the sheriff, to enjoin execution against the property of the Federal Housing Administration. The District Court dismissed the suit, and the United States has taken an appeal. The creditor has served writs of garnishment upon certain banks, as debtors of the Federal Housing Administration, and enjoined them from paying over money to the Federal Housing Administration until the debt was paid. Furthermore, the Federal Housing Administration cannot dispose of local property acquired through foreclosure because title companies have excepted the garnishment judgment from their guaranties of clear title.

2: The Act authorizing the creation of the Home Owners' Loan Corporation provides, without qualification, that the Corporation "shall have authority to sue and to be sued." Home Owners' Loan Act, 48 Stat. 128, c. 64, 12 U. S. C., Sec. 1463. With respect to whether the Home Owners' Loan Corporation is subject to garnishment, a sharp conflict has arisen in the state courts. It was held that it is not in *Home Owners' Loan Corporation v. Hardie & Caudle*, 171 Tenn. 43, 100 S. W. (2d) 238. And in *Manufacturers Trust Co. v. Ross*, 252 App. Div. 292, 299 N. Y. Supp. 399, it was held that the Home Owners' Loan Corporation was not subject to third party orders in supplementary proceedings. On the other hand, it was held that the Home Owners' Loan Corporation was subject to garnishment in *Central Market v. King*, 132 Neb. 380, 272 N. W. 244; *Gill v. Reese*, 53 Ohio App. 134, 4 N. E. (2d) 273; and *McAvoy v. Weber*, 88 P. (2d) 448 (Wash.).

In view of the number of governmental agencies and corporations, the wide range of their operations and the confused state of the law in the lower courts, this Court should make an authoritative determination of their responsibility to garnishment proceedings.

* See "Federal Corporations and Corporate Agencies," Harvard Business Review, Vol. XVI, 436; "Government Corporations and Federal Funds," 31 American Political Science Review, 1094.

CONCLUSION

The decision of the court below is in substantial conflict with the decision of a United States Court of Appeals and is in conflict with decisions of other state courts. The question involved is one of substantial importance which calls for an authoritative ruling by this Court. Therefore it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

September 1939.

